



October 2023

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Revised framework for fund raising by issuance of debt securities by Large Corporates ("LCs")

Regulation 50B of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 read with Chapter XII of the NCS Master Circular on 'Fund raising by issuance of debt securities by large corporates', *inter alia*, mandates LCs to raise a minimum 25% of their incremental borrowings in a financial year ("FY") through issuance of debt securities to be met over a contiguous block of 3 (three) years from FY 2022 onwards. SEBI, *vide* circular dated October 19, 2023, has issued a revised framework in relation to issuance of debt securities by LCs. The key provisions of the revised framework are as follows:

1. the framework will come into effect:
 - a) from April 1, 2024, for LCs following April-March as their FY; and
 - b) from January 1, 2024, for LCs which follow January-December as their FY.
2. the framework will be applicable for all listed entities (except for scheduled commercial banks), which as on last day of their FY (i.e., March 31 or December 31):
 - a) have their specified securities or debt securities or non-convertible redeemable preference shares listed on a recognised stock exchange(s);
 - b) have outstanding long-term borrowings of INR 1000,00,00,000 (Indian rupees one thousand crores) or above;
 - c) have a credit rating of "AA"/"AA+"/"AAA ", where the credit rating relates to the unsupported bank borrowing or plain vanilla bonds of an entity, which have no structuring/ support built in.
3. LCs are required to raise a minimum of 25% of their qualified borrowings through debt securities;
4. LCs are required to endeavor to comply with the requirement of raising 25% of their incremental borrowings done during FY 2022, FY 2023 and FY 2024 respectively by way of issuance of debt securities till March 31, 2024, failing which, such LCs are required to provide a one-time explanation in their Annual Report for FY 2024; and
5. from FY 2025 onwards, the requirement of mandatory qualified borrowing by an LC in a FY is required to be met over a contiguous block of 3 (three) years.

Compliance timelines extended for listed entities

SEBI, *vide* circulars dated October 6, 2023, and October 7, 2023, has provided extensions in the timeline to send financial statements under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR Regulations**”). A listed entity can send the following statements up to September 30, 2024:

1. hard copy of audited financial statement to the holders of non-convertible securities who have not registered;
2. proxy forms to holders of securities; and
3. hard copy of financial statement to the shareholder(s) who have not so registered.

Further, *vide* circular dated September 30, 2023, SEBI has extended the timeline for verification and clarification of market rumours by listed entities. The top 100 (hundred) listed entities by market capitalisation are required to verify, confirm, deny, or clarify market rumours by February 1, 2024 (initially it was October 1, 2023), and for the top 250 (two hundred fifty) listed entities, this timeline is extended to August 1, 2024 (initially it was April 1, 2024).

Regulations governing the Investor Protection and Education Fund (“IEPF”)

SEBI, *vide* notification dated October 20, 2023, has issued the SEBI (IEPF) (Second Amendment) Regulations, 2023. The key provisions are as follows:

1. the following amounts are required to be credited to the IEPF: (a) monies transferred in accordance with the Regulation 61A (3) of the LODR Regulations; (b) monies transferred in accordance with Regulation 18 (16) (f) of the SEBI (Real Estate Investment Trusts) Regulations, 2014 (“**REIT Regulations**”); (c) monies transferred in accordance with regulation 18 (6) (e) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“**InvIT Regulations**”);
2. the amounts disgorged and credited to the IEPF and the interest accrued thereon are required to, in cases where the SEBI deems fit to make restitution to eligible and identifiable investors who have suffered losses resulting from violation of securities laws or for rewarding informants who provide original information to the SEBI to recover amounts directed to be disgorged, be utilised only for the purposes of such restitution or reward; and
3. the amounts credited to the IEPF are required to be utilised for refund to the entities transferring the said amounts, pursuant to their making payment to eligible and identifiable investors and making a claim to the fund in the manner specified by SEBI.

Consequential changes have been made in relation to SEBI regulations. SEBI *vide* notification dated October 20, 2023, has amended the LODR Regulations to provide that any amount transferred to the escrow account that remains unclaimed for 7 (seven) years is required to be transferred to the IEPF and may be claimed as prescribed by SEBI.

Further, *vide* notifications each dated October 9, 2023, the InvIT Regulations and REIT Regulations have been amended to provide that any distributions declared by the InvIT/ REIT and the holdco and/or special purpose vehicle remaining unclaimed or unpaid is required to be transferred to the IEPF and can be claimed as prescribed by SEBI.

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

International Financial Services Centre Insurance Office (“IIO”) Regulations

IFSCA, *vide* notification dated October 25, 2023, has issued the IFSCA (Investment by IIO) (Amendment) Regulations, 2023, amending the IFSCA (Investment by IIO) Regulations, 2022 (“**Principal Regulations**”). In relation to investments by IIOs, it is provided that nothing contained in Regulations 10 (*Exposure in Bonds and other debt instruments rated in accordance with Insurance Capital Standards*), 11 (*Bond Exposures by Sovereign Credit Ratings*), 12 (*Equity Exposures by Sovereign Credit Ratings*) and 13 (*Property and Infrastructure Exposures by Sovereign Credit Ratings*) of the Principal Regulations will be applicable to an IIO investing its retained premium in Domestic Tariff

Area, if the investment is done to comply with the condition specified under Regulation 5 (2)(A)(b) (*Offer for participation under procedures for Re-insurance placements*) of the Insurance Regulatory and Development Authority of India (Re-insurance) Regulation, 2018. This exemption provides clarity on investment practices and compliance standards.

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION (MoCAFP)

Modifications to packaging rules

MoCAFP, *vide* notification dated October 6, 2023, has issued the Legal Metrology (Packaged Commodities) Amendment Rules, 2023 amending the Legal Metrology (Packaged Commodities) Rules, 2011 ("**Packaged Commodities Rules**") which will be effective from January 1, 2024. Some of the key amendments are as follows:

1. definition of "combination package", "multi-piece package" and "group package" has been introduced;
2. requirement to include declarations under the Packaged Commodities Rules has been removed in case of spare parts and accessories used for the purpose of servicing with a warranty and not for sale to end customers. However, the spare parts and accessories of electronic products are required to bear the declaration of month and year of manufacture in a visible and legible manner (this amendment will come into effect from April 1, 2024); and
3. packages that contain loose commodities ordered through e-commerce channels, where consumers are aware of the ordered commodity, its type and quantity, are exempted from compliance with Packaged Commodities Rules but will be required to bear certain information such as name and address of manufacturer, consumer care email id and phone number, retail sale price of the package, net quantity, in terms of the standard unit of weight or measure.

JAN VISHWAS ACT

Jan Vishwas (Amendment of Provisions) Act, 2023

1. Ministry of Housing and Urban Affairs, *vide* notification dated October 6, 2023, declares that the entries in the Jan Vishwas (Amendment of Provisions) Act, 2023 with respect to the Metro Railways (Operation and Maintenance) Act, 2002 have come into force with effect from October 6, 2023.
2. Ministry of Information and Broadcasting, *vide* notification dated October 3, 2023, states that the entries in the Jan Vishwas (Amendment of Provisions) Act, 2023 with respect to the Cable Television Networks (Regulation) Act, 1995 have come into force with effect from October 3, 2023, pursuant to which the punishments specified under section 16 of the Cable Television Networks (Regulation) Act, 1995 are decriminalised.

RESERVE BANK OF INDIA (RBI)

Permissible transactions for rupee account by persons resident outside India

RBI, *vide* notification dated October 16, 2023, has issued the Foreign Exchange Management (Debt Instruments) (Second Amendment) Regulations, 2023 granting permission to persons resident outside India who maintain a rupee account, to purchase or sell dated Government Securities/ treasury bills, as per the prescribed terms. The amount of consideration for purchase of such instruments is required to be paid out of funds held in their rupee account and the sale/ maturity proceeds (net of taxes, as applicable) of instruments is required to be credited to the said rupee account.

MINISTRY OF CORPORATE AFFAIRS (MCA)

Mandatory dematerialisation of shares for non-small private companies

MCA, *vide* notification dated October 27, 2023, issued the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 (“**Amendment Rules**”) has mandated all private companies, excluding small companies and government companies, to dematerialise their shares before October 1, 2024. The MCA had introduced this requirement for public companies with effect from October 2, 2018.

This amendment is aimed at ensuring better transparency and mitigate the risk of fraud, loss or theft. Further, the amendment will make the share transfer process more efficient and reduce the company’s expense of printing and distribution of physical certificates. The amendment will, however, have a significant impact on companies as there will be an increase in processes and costs involved. For regulators, this will aid them in mitigating benami transactions, money laundering, and other such activities.

Small company means a company, other than a public company, having paid up share capital not exceeding INR 4,00,00,000 (Indian Rupees four crores) and turnover not exceeding INR 40,00,00,000 (Indian Rupees forty crores). Further, a holding company or a subsidiary company, a company registered under Section 8 of the Companies Act, 2013, or a company or body corporate governed by any special act, cannot be a small company.

For a detailed analysis, please refer to the [JSA Prism of October 31, 2023](#).

Reporting beneficial interest in company’s shares

MCA, *vide* notification dated October 27, 2023, has issued the Companies (Management and Administration) Second Amendment Rules, 2023. The key amendments are as follows:

1. every company is required to designate a person who will be responsible for furnishing, and extending co-operation for providing, information to the registrar of companies (“**Registrar**”) or any other authorised officer with respect to beneficial interest in shares of the company;
2. the company may designate: (a) a company secretary, if there is a requirement of appointment of such company secretary under the Companies Act, 2013; or (b) key managerial personnel, other than the company secretary; or (c) every director, if there is no company secretary or key managerial personnel;
3. every company is required to provide the details of the designated person in its annual return; and
4. if the company changes the designated person at any time, it is required to intimate the same to the Registrar in e-Form GNL-2 under the Companies (Registration Offices and Fees) Rules, 2014.

Maintaining register of partners by Limited Liability Partnerships (“LLPs”)

MCA, *vide* notification dated October 27, 2023, has issued the LLP (Third Amendment) Rules, 2023, introducing changes related to the register of partners and the declaration of beneficial interest in contributions. The key amendments are as follows:

1. every LLP is required to, from the date of its incorporation, maintain a register of its partners in Form 4A which is required to be kept at the registered office of the LLP. Existing LLPs are required to comply with this requirement within 30 (thirty) days from October 27, 2023. The register should contain certain particulars, including partner details, amount and nature of contribution with monetary value, etc. Entries are required to be updated within 7 (seven) days of any changes;
2. a person whose name is entered in the register of partners of a LLP but does not hold any beneficial interest fully or partly in contribution, is required to file with the LLP, a declaration to that effect in Form 4B within a period of

30 (thirty) days from the date on which his name is entered in the register of partners specifying the name and other particulars of the person who actually holds any beneficial interest in such contribution; and

3. similar to the amendment under the Companies Act, 2013, each LLP should specify a designated partner responsible for furnishing and cooperating in providing information about beneficial interest in LLP to the Registrar and is required to file details of such designated partner with the Registrar in Form 4.

Process of shifting registered offices under insolvency resolution plans

MCA, *vide* notification dated October 20, 2023, has issued the Companies (Incorporation) Third Amendment Rules, 2023. Pursuant to the amendment, the shifting the registered office from one State or Union territory to another State is allowed, if the management of the company has been taken over by a new management under a resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”). There should be no appeal pending against the resolution plan in any court or tribunal or any pending inquiry, inspection, investigation that has been initiated after the approval of the said resolution plan.

Exemptions from moratorium under Section 14(1) of the IBC

MCA, *vide* notification dated October 3, 2023 (“**Notification**”), has notified exemption from the applicability of moratorium under Section 14 of the IBC, to transactions, arrangements or agreements, under Convention on International Interests in Mobile Equipment and its Protocol on Matters Specific to Aircraft Equipment (“**Cape Town Convention**”) relating to aircraft, aircraft engines, airframes and helicopters. Cape Town Convention is an international instrument that establishes a set of minimum guarantees reflecting the principles of asset-based financing and leasing agreements pertaining to mobile equipment, including “airframes, aircraft engines and helicopters”. India became a signatory to the Cape Town Convention in 2008. Notably however, though India acceded to the Cape Town Convention in 2008, it has not yet ratified it. Despite attempting ratification through the Cape Town Convention Bill in 2018, it was not passed in Parliament. In this backdrop, the Notification is a significant step towards fulfilling India’s obligations under the Cape Town Convention that will include protection of repossession rights of aircraft lessors and creditors, and thereby reducing the risk associated with aircraft leasing, financing and airline company’s insolvency situations.

MINISTRY OF FINANCE (MoF)

Client due diligence records to be obtained immediately by reporting entity

MoF, *vide* notification dated October 17, 2023, has issued the Prevention of Money-laundering (Maintenance of Records) Third Amendment Rules, 2023. The key amendments are as follows:

1. the principal officer of a reporting entity is required to, on being satisfied that the transaction is suspicious, furnish the information promptly to the relevant authority appointed under the Prevention of Money-laundering Act, 2002, in respect of the prescribed transaction;
2. every reporting entity, which is part of a group, is required to implement group-wide programmes against money laundering and terror financing and such programmes are required to include adequate safeguards on the confidentiality and use of information exchanged;
3. every reporting entity, its directors, officers, and all employees are required to ensure that the fact of maintenance of records and furnishing of information to the director is kept confidential; and
4. at the time of commencement of an account-based relationship or while carrying out occasional transaction of an amount equal to or exceeding INR 50,000 (Indian Rupees fifty thousand), whether conducted as a single

transaction or several transactions that appear to be connected, or any international money transfer operations, every reporting entity is required to:

- a) identify its clients, verify their identity, obtain information on the purpose and intended nature of the business relationship;
- b) immediately obtain client due diligence records from the Central KYC Records Registry or from third party sources;
- c) take reasonable steps to understand the nature of the customer's business, and its ownership and control; and
- d) determine whether a client is acting on behalf of a beneficial owner and identify such beneficial owner and take steps to verify the identity of the beneficial owner, using independent and reliable sources.

JSA Updates

Recent amendments to the regulations puts the spotlight on exits and governance

The REIT regime has evolved over the years, and SEBI has proactively engaged with relevant stakeholders from time to time. SEBI recently published consultation papers on February 23, 2023, and May 16, 2023, proposing certain changes to the REIT framework. On August 16, 2023, SEBI notified the Securities and Exchange Board of India (REITs) (Second Amendment) Regulations, 2023.

For a detailed analysis, please refer to the [JSA Prism of October 3, 2023](#).

Law once declared to be violative of Part-III of the Constitution to have retrospective effect

The Constitution Bench of the Supreme Court of India recently, in the case of Central Bureau of Investigation vs R.R. Kishore, held that its decision in *Subramanian Swamy vs. Central Bureau of Investigation*, that Section 6A of Delhi Special Police Establishment Act, 1946 ("DSPE Act") being unconstitutional, will have retrospective effect. Section 6A of the DSPE Act is held not to be in force from the date of its insertion i.e., September 11, 2003.

For a detailed analysis, please refer to the [JSA Prism of October 13, 2023](#).

Corporate Practice

JSA's corporate practice is centered around transactional and legal advisory services including day-to-day business, regulatory issues, corporate and governance affair We have an expert team of attorneys who advise on legal issues concerning inbound and outbound investments, strategic alliances, collaborations and corporate restructurings. We advise clients through all stages of complex and marquee assignments including restructuring, mergers and acquisitions (including those in the public space) to private equity and joint ventures. Our vast clientele includes multinational corporations and large Indian businesses in private, public and joint sector. We work closely with in-house counsel teams, investment banks, consulting and accounting firms along with multilateral agencies and policy making institutions on development of policy and legal frameworks. We provide assistance and counsel to start-ups and venture backed companies by drawing upon our in-depth understanding of how companies are incorporated, financed and grown. With an in-depth understanding of the industry combined with years of expertise, our attorneys provide innovative and constructive solutions to clients in complex transactional engagements. We emphasize teamwork across our wide network of offices across India. This allows us to benefit from the various specialisations available for the ultimate benefit of our clients. We also provide assistance in dealing with diverse corporate governance and compliance issues including FCPA /Anti-Bribery/Anti-Corruption matters and investigations.

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<p>17 Practices and 24 Ranked Lawyers</p>	<p>16 Practices and 11 Ranked Lawyers</p>	<p>19 Practices and 19 Ranked Lawyers</p>
		
<p>11 Practices and 39 Ranked Partners IFLR1000 APAC Rankings 2022</p> <p>-----</p> <p>Banking & Finance Team of the Year</p> <p>-----</p> <p>Fintech Team of the Year</p> <p>-----</p> <p>Restructuring & Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices</p> <p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>10 A List Lawyers in IBLJ Top 100 Lawyer List</p>	<p>Banking & Financial Services Law Firm of the Year 2022</p> <p>-----</p> <p>Dispute Resolution Law Firm of the Year 2022</p> <p>-----</p> <p>Equity Market Deal of the Year (Premium) 2022</p> <p>-----</p> <p>Energy Law Firm of the Year 2021</p>
		
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